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(For Applicant)

In re application of
Gary R. Tucholski et al.
Serial No.: 07/641,394
Filed: January 15, 1991
For: BATTERIES WITH TESTER LABEL

LETTER RE ACCESS

This is in response to a petition filed August 30, 1993, (copy enclosed) entitled PETITION FOR ACCESS. Petitioner states that U.S. Patent No. 5,223,003 relies for priority, under 35 U.S.C. § 120, on the '394 application. Petitioner requests a copy of the portion of the '394 application that relates to the common subject matter of the '003 patent application including all materials relating to the prosecution in the application of the subject matter claimed in the patent, or access to the complete application if applicant permits.

A review of the record shows the '003 patent is identified as a continuation-in-part of the '394 application. Accordingly, the '003 patent relies, under 35 U.S.C. § 120, upon the filing date of the '394 application with regard to common subject matter. The '394 application is currently pending. 37 CFR § 1.14(a).

Whenever a patent relies upon the filing date of an earlier but still pending application, the public is entitled to see the portion of the earlier application that relates to the common subject matter, and also what prosecution, if any, was had in the earlier application of subject matter claimed in the patent. MPEP 103.

The PTO will not attempt to separate the noted materials from the remainder of the application file. Compare In re Marsh Engineering Co., 1913 C.D. 183. Accordingly, applicants are hereby given the opportunity to object to petitioner being granted access to the entire '394 application file. Should applicants object, applicants must file two sets of a copy of the portion of the parent '394 application file that relates to the common subject matter, including all materials relating to the prosecution in the '394 application of the subject matter claimed in the '003 patent. The required materials must be submitted within three weeks from the date of this letter. This time period is not extendible under the provisions of 37 CFR § 1.136(a). A failure to respond within the allotted time will be construed as applicants' approval for release of the entire '394 application file (including all prosecution). The response should be addressed to the United States Patent and Trademark Office, Office of the Assistant Commissioner for Patents, Special Program Examination Unit, Crystal Park 2, Suite 919, Washington, D.C. 20231.

Gerald A. Dost
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